DOCUMENT RESUME

ED 133 810 EA 009 045

AUTHOR Lehne, Richard
TITLE Complex Justice: Courts, Agenda-Setting and School Finance.
PUB DATE Sep 76
NOTE 42p.; Paper presented at the Annual Meeting of the American Political Science Association (Chicago, Illinois, September 2-5, 1976)

EDRS PRICE MF-$0.83 HC-$2.06 Plus Postage.
DESCRIPTORS Constitutional Law; *Court Role; Decision Making; *Educational Finance; Educational Legislation; *Educational Policy; Elementary Secondary Education; *Policy Formation; Politics; School Law; *State Legislation; *Supreme Court Litigation
IDENTIFIERS *New Jersey; Robinson v Cahill

ABSTRACT

This paper discusses the role of the courts in public policy formation, with particular attention to the impact of the New Jersey Supreme Court's decision in Robinson v. Cahill. The author explores the implications of judicial involvement in policy controversies by examining the responses of the New Jersey legislature and Department of Education to the Robinson v. Cahill decision. The analysis focuses on various aspects of the official reaction to the court's decision, including the definition of the Robinson issue itself, the impact of timing on policy deliberation, the context in which the issue was considered, and the patterns of public participation and the structure of the policy process that shaped the new school program. In each instance, the author appraises the significance of the court's role in the controversy, based on information from lengthy interviews with 26 members of the New Jersey legislature and 20 people from the State Department of Education. Additional information for the study was gathered through 50 additional interviews with persons from the legislature, the executive branch, the legal system, and interest groups, as well as by examining a large amount of documentary and fiscal material and responses to a series of public opinion polls. (Author/JG)

****
* Documents acquired by ERIC include many informal unpublished *
* materials not available from other sources. ERIC makes every effort *
* to obtain the best copy available. Nevertheless, items of marginal *
* reproducibility are often encountered and this affects the quality *
* of the microfiche and hardcopy reproductions ERIC makes available *
* via the ERIC Document Reproduction Service (EDRS). EDRS is not *
* responsible for the quality of the original document. Reproductions *
* supplied by EDRS are the best that can be made from the original. *
****

ED133810

U S DEPARTMENT OF HEALTH, EDUCATION & WELFARE NATIONAL INSTITUTE OF EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

PERMISSION TO REPRODUCE THIS COPYRIGHTED MATERIAL HAS BEEN GRANTED BY

Richard Lehne

TO ERIC AND ORGANIZATION OPERATING UNDER AGREEMENTS WITH THE NATIONAL INSTITUTE OF EDUCATION FURTHER REPRODUCTION OUTSIDE THE ERIC SYSTEM REQUIRES PERMISSION OF THE COPYRIGHT OWNER

COMPLEX JUSTICE: COURTS, AGENDA-SETTING AND SCHOOL FINANCE

By

Richard Lehne
Eagleton Institute
Department of Political Science
Rutgers University

Prepared for delivery at the 1976 annual meeting of the American Political Science Association: The Palmer House, Chicago, Illinois; Copyright 1976.

September 2-5, 1976

EA 009 045

The people of New Jersey celebrated the nation's bicentennial as the proprietors of the only statewide school system in American history that has ever been totally shut down. The New Jersey Supreme Court had ruled that after June 30, 1976, no public official could spend any funds for the operation of any public school in the state.[1] Until the legislature enacted a constitutional plan of funding elementary and secondary education, the schools would remain closed to the 100,000 students who expected to enroll in academic summer sessions, to the many handicapped youngsters who participated in special education activities during July and August, and to the administrative and curriculum personnel who were preparing programs for the 1.4 million children who attended New Jersey's public schools during the normal school year. On June 30, numerous public officials were gathered in Trenton trying to cope with the supreme court ruling, but by the time midnight struck, a panel of eleven federal judges had decided not to overturn the state court ruling, the legislative leadership had failed to devise a package which would win majority support in both houses, and the state supreme court order closing the schools went into effect.

The court's stern decision to close New Jersey schools was not a petulant reaction to momentary events. The justices ordered the schools closed only after years of frustration and controversy had embroiled the state's governing institutions. On April 3, 1973, the Supreme Court of New Jersey declared the state's system for funding elementary and secondary education to be unconstitutional and ordered the state legislature to devise a new school finance plan which

would pass constitutional muster. Despite dozens of proposals, scores of sessions, and years of effort, New Jersey's senate and assembly were unable to fund a school finance program acceptable to the court. When the legislature failed to adopt an adequate policy to fund education, the state supreme court padlocked the schools until they did.

The involvement of the New Jersey Supreme Court in that state's policy process vividly illustrates the dynamic role courts have come to occupy in the conduct of public policy in the United States. In the last few years, judicial initiatives in such areas as desegregation, school prayer, welfare, defendant rights, legislative apportionment and abortion have guided the reformulation of countless public policies. And continuing efforts are underway to use court systems to rewrite public policies governing zoning and land use, the provision of local services, prisoners' rights, the structure of government in metropolitan areas and access to beaches and other public amenities.

Law reformers have been attracted to the judicial arena by the stunning victories won there in the name of civil rights and civil liberties. With Brown v. Board of Education as an implicit model, activist lawyers pursuing egalitarian goals frequently shun popularly elected legislators and executives and attempt to achieve their objectives through the decisions of judges who are insulated from the majoritarian currents of public opinion.

The victories of activist lawyers have inspired not only numerous imitators but also a chorus of critics who denounce court decisions in these policy areas and question the desirability of this type of judicial activism. Since reactions

to court decisions often reflect an individual's appraisal of the groups perceived to gain or lose from the judgment, most objections to the role courts play in disputed policy areas are dismissed as complaints of people who do not favor the policy goals being litigated.[2] In recent years, however, a catalogue of criticism has been assembled by prestigious commentators whose motives can not be so easily impuned. Constitutional critics complain that excessive involvement of judges in policy disputes emphasizes the political nature of court decisions and tarnishes the image of neutral competence essential to public acceptance of judicial rulings.[3] Pragmatic critics assert that courts are often inappropriate vehicles to pursue policy goals, not because of constitutional inhibitions, but because the consequences of court decisions ripple out into the real world in a thoroughly unpredictable fashion.[4] From the radical flank, others protest that the legal process in general and the United States Constitution in particular are weighted against the changes activist lawyers seek. The visionary goals of the original Constitution--a federal system, a national economy, a unified posture in foreign affairs and a viable military establishment--have now all been achieved, and in the future the principles of the Constitution are more likely to frustrate reformers than to assist them.[5]

Accumulating criticisms and the direction of political events may slow the growth of judicial participation in policy controversies in the years ahead, but it is unlikely that they will prevent courts from exercising the vast discretion they already possess in major policy areas. Perhaps the United States has entered a fundamentally new era where courts do not simply respond when problems are

left untended by other institutions but instead display an ongoing activism which continually affects the conduct of public policy.[6] The expansion of government in society and the progressive logic of constitutional positions once taken may have propelled courts beyond the point where they can retreat from a dynamic role in policy debates. Even if these factors have not pushed the courts beyond that point of no return, hundreds of advocacy law centers have been established to make it more difficult for courts to avoid the full implications of the constitutional positions they have already expressed. The prospects for at least the immediate future are for continuing judicial involvement in important policy questions, yet an involvement whose total consequences are not well understood.

The school finance litigation of the past decade provides a contemporary opportunity to explore the significance of judicial activism in policy debates, and New Jersey's Robinson-Cahill controversy is certainly one of the most fascinating cases. The original complaint in the Robinson-Cahill litigation was filed in February 1970, and it charged that the state's program for financing elementary and secondary schools was unconstitutional because it violated the equal protection provisions of both the state and federal constitutions and because it left some communities without the funds needed to maintain a thorough and efficient system of public schools as required by the education clause of the state constitution.[7] In April 1973, the New Jersey Supreme Court followed the lead of the United States Supreme Court in rejecting the equal protection arguments, but it declared the state's program for funding schools unconstitutional because the state had never defined what a "thorough and efficient" education actually was

and because some schools in the state did not provide their children that "thorough and efficient" education.[8] The court ordered the legislature and the State Department of Education to define the state's obligation under the education clause and to create a school finance system to satisfy that obligation.

From April 3, 1973, to August 18, 1976--for three and one half years--the state's governing institutions were consumed by their efforts to respond to the supreme court ruling. During this period, the court delivered five subsequent decisions, the legislature passed but for many months did not fund a new education finance bill, the popularity of the governor plunged to an historic low, legislative resolutions were introduced to amend the state constitution and impeach all the members of the supreme court, thousands of education employees were laid off from their jobs, and then the public schools throughout the state were closed. Finally, after four days of almost round-the-clock sessions, both houses of the state legislature agreed to enact and the governor agreed to sign an income tax package which provided the school funds the court required.

Most attempts to appraise the role of courts in such situations have viewed courts as decision-making institutions.[9] Courts render a decision, and it is then the obligation of the parties to the case and the community at large to obey the ruling with greater or lesser speed. The conceptualization of courts as decision-making institutions leads to examinations of the patterns of compliance with court decisions and to analyzes of the determinants of compliance.

However important these questions are for the conduct of public policy, the

view of courts as decision-making institutions can overlook as much as it brings into focus. It assumes that the meaning of a decision is apparent to any informed reader, while in many cases the actual meaning of a court ruling is often determined not by the text but by the manner in which the final judgment is implemented.[10] It does not account for the fact that a judicial statement may affect policy officials in ways that have little to do with its specific content, altering their attitudes, changing the relationships between the institutions they administer and involving them with previously disregarded groups. Institutions themselves may also be transformed in response to court action, causing them to change their priorities, redeploy their resources and restructure their organizational patterns. Numerous questions beyond the extent of compliance with a court decision need to be asked to determine the full significance of judicial involvement in policy controversies.

An alternative perspective on the role of courts has emerged in past decades from changes in the nature of court rulings themselves. Archibald Cox noted that landmark decisions have generally shifted from "...mandates directing the government to refrain from a particular form of regulation" to judgments which require states "...to make some changes in the status quo--some alteration of a widespread and long accepted practice, some improvement from the standpoint of human rights."[11] While judicial decisions have traditionally been negative statements proscribing specified actions, in recent decades courts more frequently demand positive actions from government to achieve specified goals. The judiciary is now more likely than before to require the executive, the legislature

and the public to deal with an issue but to leave them an uncertain latitude to determine exactly how. Jonathan Casper captures the essence of this process in his analysis of Lawyers Before the Warren Court:[12]

> The typical image of litigation as a conflict-resolving process, a mechanism for settling overt disputes...may be by now simply a straw man...litigation served not only to win cases but also to raise issues. In a sense it was as much a conflict-generating as a conflict-resolving process. This is not to say that the conflict that emerged after judicial decisions did not exist before...What the Court can and did do was to insure that these basic political issues were placed upon the agendas of other political institutions....Courts cannot determine political outcomes in issue areas...but they can...take steps that make it essential for other institutions--legislatures and executives--to participate in the process of collective decision....The Court functions as a kind of access point and agenda-setter, not a final decision-maker.

Thus, courts can be viewed as agenda-setting institutions in policy disputes rather than decision-making agencies, institutions which specify the issues to be considered rather than agencies which impose concrete policies and principles.

This view of the judiciary as an agenda-setting mechanism is a particularly appropriate perspective from which to examine school finance litigation, both nationally and in New Jersey. Some school finance litigants, themselves, viewed the judicial system in this way, expecting that genuine victories would be won not in the courts but from the reactions of other political institutions to judicial initiative.[13] Courts were used to prod legislatures and executives to reform school funding in ways thought to be constructive rather than to reward individual school districts and income groups directly.

Many courts as well accepted the agenda-setting role in the school finance

litigation. They delivered declaratory judgments in school finance cases which ruled statutes unconstitutional, but, because of the newness of the law in this area and the forbidding position of legislatures in the taxation and appropriations process, they were hesitant to define clear remedies.[14]

The New Jersey Supreme Court operates within the context of a dual political and judicial heritage that combines legal professionalism and a long history of innovative policy decisions. Almost twenty-five years before John Marshall's Supreme Court established the authority of the federal judiciary to invalidate an act of congress in Marbury v. Madison, a New Jersey court had already become the first in the nation to strike down a legislative act.[15] And New Jersey's justices still believe that they should do more than simply dispose of cases. In a recent study, six of the seven justices of the New Jersey Supreme Court responded that fashioning public policy was an essential part of their job, but in contrast more than two thirds of the justices from the other states replied that a state supreme court should simply interpret the law, not make policy.[16] Not long ago someone close to the New Jersey Supreme Court elaborated on that court's policy role:[17]

> (In an early reapportionment case), people raised the political thicket argument contending that we should stay out because the questions were too political, but they should have known better. They should have known that no thicket was too political for us....Decisions should not change law every year because there should be some stability;perhaps every five years. But decisions must change law sometime, because law is largely policy anyway.

The New Jersey Supreme Court, however, is often reluctant to erect constitutional standards to impose its own public policies:[18]

> The quality of judicial writing is one of encouraging the legislature, setting activities in motion which will have secondary consequences to lead the senators and assemblymen to act. This is the essence of democracy. We can encourage the legislature to pass laws or taxes without directing them to do that. This is the wonder of our system, and besides its works to accomplish judicial objectives.

The New Jersey Supreme Court based its Robinson v. Cahill decision on the provision of the state constitution which stipulates: "The legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in this state...."[19] Since the state had never defined its obligations under this clause, the court ruled that the method of financing public schools, which relied heavily on local property taxation and which permitted wide discrepancies in funds available to support education in different communities, was unconstitutional.

The court initiated a momentous dispute which would entangle the state's policy-making institutions for the next three years, but the ruling did not command any particular solution to the problem. That was left to the legislature and the executive. Furthermore, the court launched these far-reaching events without establishing a constitutional standard that would inevitably limit its discretion in future cases. True to its admonition, "If you look at the constitution and see only your own image, you know you're in trouble," the court's judgment in Robinson did not erect constitutional tests which would necessarily have sweeping consequences. The decision which would convulse the state in the years ahead was politically aggressive, but its strict constitutional assertions were quite modest. The court integrated a forceful political strategy with a restrained legal philosophy

and displayed a clear awareness of the difference between political agenda-setting and judicial decision-making.

Most discussions of agenda-setting try to determine why some items are seriously considered by public officials while other topics fail to win governmental attention, why government considers the issue of television blackouts of football games but ignores problems of hunger, discrimination and exploitation.[20] The view of the court system as an agenda-setting technique here leads beyond questions of how and why issues are raised for policy consideration to the evaluation of the impact of specific agenda-setting techniques on subsequent policy debates. What are the consequences of the fact that an issue arose through the court system rather than through more traditional agenda-setting techniques such as public opinion? Are there specific characteristics of court actions as agenda-setting procedures, as opposed to the features of other agenda-setting techniques, which affect the attitudes, objectives and activities of participants in policy debates? In sum, how does a court's involvement as an agenda-setting institution in a policy controversy reshape the politics of that controversy? Looking at Robinson v. Cahill, did the fact that the issues of educational funding and governance came before the New Jersey legislature because of a court decision affect the way in which those issues were considered? Did the participation of the court in the controversy influence the reply of the state Department of Education to the events of 1973 to 1976?

This study explores the implications of judicial involvement in policy controversies by examining the responses of the New Jersey legislature and Department

of Education to the Robinson v. Cahill decision. The analysis focuses on five aspects of the official reaction to the court judgment: the definition of the Robinson issue itself, the impact of timing on policy deliberation, the context in which the issue was considered, the patterns of public participation and the structure of the policy process that shaped the new school program.[21] In each instance, the significance of the court's role in the controversy is appraised. This investigation rests directly on lengthy interviews with twenty-six members of the New Jersey legislature and twenty people associated with the State Department of Education.[22] It has been enriched by fifty additional interviews with persons from the legislature, the executive branch, the legal system and from interest groups, by the examination of a large amount of documentary and fiscal material and by responses to a series of public opinion polls.

Definition of Problem

The Robinson v. Cahill decision was a complex one, and legislators were no more certain of its meaning than many other citizens. Unlike other citizens, however, legislators were charged with the responsibility of fashioning a response to a court ruling some admitted they did not understand.

Members of the senate and assembly were frustrated by their inability to decide precisely what was asked of them. An appropriate legislative program would undoubtedly affect school operations, school finance and the state's revenue system, but no one knew precisely how. In fact, the men and women of the Legislature were faced with three tasks: 1) revamping the governance of education in the state; 2) redesigning the state aid system; and 3) raising $300 to $400

million in new revenue. They were obliged to confront each of these three problems at the same time and were provided with few guidelines by the court to help them delimit their efforts. The court's declaration of unconstitutionality made legislators reconsider almost every aspect of the state's established educational programs and educational finance system. Before the educational decisions could be made, for example, legislators were asked to consider the role of education in society and judge the relative importance of creativity, authority, basic skills and individual fulfillment in the classroom; they were urged to evaluate the claims of liberal arts advocates and career-awareness champions and to appraise professional debates about effective approaches for remediation; and they were forced to balance the benefits of home rule and citizen participation in local schools against the demands of professional employee groups and the imperatives of the state's revitalized constitutional obligation to each student.[23] The multiplicity of topics within the scope of the court's decision complicated the legislature's assignment and prolonged its deliberations.

Collective decision-making institutions frequently resolve a controversy by including certain aspects of an issue and deleting others until a policy emerges which is acceptable to the requisite groups and majorities. Court participation in the issue left legislators unsure of their ability to restrict examination of the issues before them and thus rendered the process of legislative consideration extraordinarily time-consuming.

While judicial involvement left legislators reluctant to restrain their own analyses, it also made it difficult for them to resist others who claimed that their

objectives were a necessary component of a legislative response to the court ruling. The incumbent state administration argued that an adequate response to the court decision would require the legislature to break with long tradition and adopt a state income tax.[24] Since two previous administrations had failed in their efforts to persuade the legislature to enact an income tax, the link between Robinson v. Cahill and an income tax proposal was likely to compound the legislature's problems in reaching agreement, and it did. From June 1974 to July 1976, the legislature angrily rejected a dozen different tax proposals, poisoning executive-legislative relations for the balance of the session and exacerbating tensions between the two houses.

Other groups with educational interests in the state recognized that new education legislation was a likely vehicle for them to attempt to secure their own goals. To select only one example from scores, the association of guidance counselors contended that an adequate response to the judicial ruling would require the state to mandate student counselor ratios in schools throughout the state. In addition, examination of the Robinson issues themselves surfaced other latent debates in New Jersey education circles such as the basic skills controversy and even created disputes which previously had not existed such as the constitutional challenge to the composition of regional school districts. The need to consider such issues further disrupted the state's decision-making process and further confused the primary topics at issue.

Robinson v. Cahill was more easily defined by the Department of Education as a mandate to improve the general quality of education in the state. The

agencies and divisions of the Department are continuously immersed in the day-to-day operations of the state's schools, and they have each developed commitments to specific philosophies and activities of education. It comes as no surprise that when asked how to respond to Robinson, almost every agency urged that more resources be devoted to its activities. Different parts of the department argued that an appropriate response to Robinson required more adult education, more testing, more vocational education, more remedial programs and more school lunches.[25]

Robinson was an opportunity for the agencies of the Department to enhance their role, but the decision could also jeopardize the Department's programs. Department leadership believed that the educational process was a complex one which could not be intelligently defined in terms of easily measurable items.[26] Education would be destroyed if schools concentrated their attention on topics which could be measured through standardized tests. The situational variables in learning were too critical, they concluded, to rely on standardized programs for diverse community needs. Arguing that the changing nature of the world made it impossible to prescribe a fixed set of goals and procedures for education, the Department discouraged efforts to develop simplistic rubrics for public education. In addition, previous legislation had required the Department to secure the approval of a legislative commission before implementing an earlier school finance system. That had been a bitter and frustrating experience which left the Department reluctant to encourage the legislators and executive office personnel to make educational decisions. The Department resisted simple definitions of

Robinson which could be used by lay or political figures in the state. The Department advocated the establishment of a comprehensive educational process which envisioned the adoption of diverse educational goals by the state and local schools districts and a varied program of state and local assessment of whether those goals were being achieved. The funding provisions of the new program were not based on educational activities but on assessed property valuation in each school district. The department used the subtlety of its comprehensive process to preclude initiatives from outside the education community.

The New Jersey Supreme Court required the legislature and the State Department of Education to participate in a "process of collective decision," but the shape of the Robinson v. Cahill and the different premises of the two institutions made that a tedious collaboration. Judicial involvement in the issue made the legislature reluctant to dispense with topics and impose cloture on debates for fear of denying someone a rightful day in court. The court's participation multiplied the number of topics that had to be examined, prolonged the time needed for legislative consideration and robbed legislators of some of their ability to shape and control the legislative process. At the same time, the Department was unwilling to accept a definition of the Robinson problem which would facilitate legislative consideration. Unlike court decisions in other states which were essentially financial judgments, Robinson v. Cahill ordered the New Jersey legislature to review the state's total educational program and at the same time made the Department of Education fearful of that review.

Timing

The justices of the New Jersey Supreme Court do not read their decisions in cases to the assembled litigants and the press. In New Jersey, written copies of rulings are usually distributed at 10 a.m. in the office of the court's clerk.[27] The Trenton press corp, headquartered on the first floor of the state house, has normally received twenty-four hour advance notice of all noteworthy decisions. On minor stories, wire service writers sometimes pick up copies of the decision and distribute them to the other state house reporters, but on decisions of major interest the press will jam the clerk's office to get copies of the ruling and then run off to file stories as their individual deadlines dictate.

When New Jersey officials read accounts of the Robinson decision, they recognized that it differed from other problems they had faced. Consideration of most policy issues can be delayed so long that the pressures to confront them dissipate. When issues are raised for policy consideration by an outcry of public opinion, a study commission can be established or a resolution passed to deal with the politics of the problem without facing the problem itself. An issue placed before the legislature or an executive department by a court is more difficult to displace without some concrete action. Court-sanctioned agenda items have staying power; they must be faced, and faced within a relatively short time.

Policy institutions in the United States usually focus on subjects and programs when the climate of the times favors those functions. For example, many of the nation's environmental politics were a heritage of the late 1960's and early 1970's. Those environmental policies would have looked vastly different if they had been

critically reexamined and totally redrafted during the sobering years of the mid-1970's.

Courts, on the other hand, are not always mindful of the trends of public preference when they place an issue before a state's traditional policy institutions. The New Jersey Supreme Court required the legislature to concentrate on questions of education and finance during the 1974 to 1976 period, years that were hardly propitious for people who championed established education programs. Confidence in educators was shaken by declining scores on standardized exams, and the premise that increases in educational expenditures would improve educational performance was no longer universally accepted. Legislators were required to concentrate on education issues at a time when there was more fundamental censure and castigation of education than there had been for years, and they were required to raise additional school revenues at a time when New Jersey's economy was in its most sluggish condition since the Great Depression.

A majority of New Jersey legislators believe that the schools are not doing a good job educating the state's children.[28] Almost unanimously, lawmakers have concluded that public schools do not teach basic skills as well as they once did,[29] and many fume when they consider how local school districts use their funds. A host of stories about expensive band uniforms, unnecessary supervisors, lavish football fields and extraneous public relations personnel was topped by an incredulous legislator who reported that on a visit to a local school officials complained that their new planetarium was not as well equipped as they desired because of unreasonable fiscal restraints. In another contrast with the past, legis-

lators, like citizens, reject the image of school teachers as a selfless group totally dedicated to the interests of children. From a list that included business corporations, suburbanites, labor unions, and wealthy individuals, legislators picked school teachers as the group in society which receives the best treatment from government.[30]

Most lawmakers who first focused on education issues during the troublesome Robinson years have adopted the critical views of school performance associated with the mid 1970's. In contrast, almost all members of the senate and assembly who dealt with educational issues before the court's decision praise the work being done by New Jersey's schools.[31] Part of this stark contrast might be attributed to the fact that legislators who had become involved in education matters before Robinson may have been predisposed to favor education, but the contrasting evaluations also imply that many legislators adopt the opinions about schools which prevailed when they first examined education topics. Lawmakers who encountered education policies when schooling was seen as a solution to many social problems still acclaim New Jersey's schools, but legislators whose attitudes were shaped in the mid-1970's when schools themselves were seen as a social problem chastise educators. Members of the senate and assembly who acquired their critical views of education in the mid 1970's might persist in those attitudes in the decades ahead even if popular sentiments about education again turn more favorable. If they do, the persistence of these negative opinions must be considered one consequence of the fact that the supreme court compelled legislators to scrutinize education policy during very disapproving years.

The suspicious 1970's may have persuaded citizens and legislators to monitor school operations more closely, but they have not taught persons associated with the State Department of Education skeptical attitudes about school performance. Almost without exception, departmental personnel applaud the job now being done by the state's schools, and a majority assert that schools are teaching basic skills as well as they had in the past, if not better.[32] School programs, they explain, have improved in recent years, but schools are now expected to take time from normal educational tasks to explain the dangers of drug abuse and to deal with new population groups from less supportive family situations and neighborhood environments. For the department, the significance of the fact that the supreme court required it to address the issues of Robinson in the period from 1974 to 1976 did not emerge from changes in attitudes but rested instead on the stability of leadership and the degree of harmony within the department itself.

Just one day before the Robinson decision was rendered, an Acting Commissioner of Education was designated by the governor to succeed the previous Commissioner whose reappointment had been rejected by the state senate at the behest of some elements of the education community and over the objections of others. The Acting Commissioner served on a temporary basis for fifteen critical months. The creative tension which typified the department at its best deteriorated during these months as agencies and divisions downgraded departmental concerns to concentrate on their own activities. A veteran of these days recounts:

> There was an outbreak of empire building....People were trying to consolidate power to pressure the new commissioner. Partly it was a difference over how things should be run and partly a question of who was in and who was out, which divisions take precedence.

In the 1960's the tensions of education reform had been relieved by a influx of federal funds into state education departments and by the increased support for public schools which came from state governments. By the 1970's however, public criticism of education and the relative scarcity of new funds combined to inflame rather than dampen hostilities within a leaderless department. These conditions did not facilitate a constructive review of the state's education program.

The timing of Robinson v. Cahill affected the activities of the New Jersey legislature in an additional way as well. The court required the legislature to address the complex thorough and efficient—school finance issues in the years 1974-76, and the attention devoted to this problem effectively preempted consideration of other comprehensive education topics. Collective decision-making institutions responsible for a wide range of policy areas normally concentrate on a single governmental function only occasionally, and the New Jersey legislature's opportunity in the mid-1970's to examine education was expended on Robinson v. Cahill. A few legislators lamented this development. They argued that there were significant issues about the quality and governance of education which were not and perhaps could not be given adequate attention in the throes of a revenue and aid controversy. Something had been happening to the state's educational institutions in the past half decade or so which they did not understand and which their constituents did not like, but the revenue and expenditure controversies of this session had not

permitted them to bring those misgivings into focus. So many different questions were raised in these years that it was difficult to clarify troublesome problems and concentrate on nagging issues. An opportunity had been lost to consider profound questions in the state's most consuming policy area and another opportunity might not come along for another half decade.

The New Jersey Supreme Court focused attention on education issues at a time that would not have been selected by the department, the legislature or by the education community in general. During the mid-1970's, negative views of education were ascendant in the state legislature, and the department was less well-prepared to cope with basic issues than it had been in the past or would be in the future. Robinson articulated the cares and aspirations of the 1960's, but it suffered from the excesses of those years and from the restraints of the 1970's. By the mid-1970's, organizational concerns about the problems of urban and disadvantaged communities were not as prominent in New Jersey education circles as they once were and the funds from federal and state sources did not flow as freely. The chances that Robinson would yield a comprehensive reform of educational policy in New Jersey would have been greater in the 1960's than in the period from 1974 to 1976.

Context of Consideration

When policy institutions examine a public issue certain aspects of the situation are highlighted and other factors are set aside as less relevant. Apparently, the United States Supreme Court concluded that the role of states in the federal system was more relevant to Rodriguez than were the conditions of the disadvantaged.[33]

Under certain circumstances, student behavior is regarded as an education issue, while at other times the same topic is seen as a civil liberties question, a problem of urban areas or a financial controversy. The policy context in which an issue is considered can vary from situation to situation, and the factors that are deemed relevant often shape the outcome of the policy debate. The task here is to establish the context in which Robinson was perceived in New Jersey and to determine if judicial involvement in Robinson altered that context.

Most legislators believed that Robinson v. Cahill differed from ordinary problems because it "had an air of law about it, a feeling that it was somehow special." For a time, this judicial aura rendered the normal determinants of legislative behavior slightly less important than they usually are. Education politics in New Jersey are traditionally less partisan than other policy debates, but this characteristic appears to have been reenforced by Robinson. Final voting patterns generally respected party lines, but legislative discussions on school operations and even school aid betrayed fewer traces of the calculation of partisan advantage and disadvantage than is normal.[34] In addition, the characteristics of constituency and the impact of program on constituency did not determine legislators' positions. Legislators looked at each proposal to be sure that their constituency would receive at least as much school aid as it had previously received, but so long as their districts were not hurt financially, legislators' evaluations of the ruling were not closely related to its impact on their constituency. Legislators' opinions about Robinson were also unrelated to their evaluation of the quality of the state's existing educational system. Members of the senate and assembly who

believed that the state's schools were performing poorly were no more likely to approve the Court ruling which implied some reform of school operations than were legislators who stated that the schools were already doing a good job. Neither partisanship, constituency, nor appraisal of existing programs dictated legislators' attitudes toward the Robinson decision.

The fact that Robinson was a statement of the state supreme court predisposed some legislators to favor it. Evaluations of the decision were partially shaped by the high regard most members of the senate and assembly have for the court and its personnel, with legislators who respect the court normally praising the decision and those few members who critize the court also denouncing the decision.[35] The court's judgment that heavy reliance on local property taxation to finance public schools was unfair made some lawmakers more conscious of considerations of fiscal equity than they had been in the past. For the few legislators without established positions on issues such as minimum aid to wealthy school districts, judicial invocation of principles of equity probably influenced their opinions, but the court ruling had not visible impact on the pre-established attitudes of the overwhelming majority of legislators.

Whether they praise the decision or condemn it, legislators speak first of the court's Robinson v. Cahill decision in policy terms. New Jersey lawmakers understood Robinson to be essentially a fiscal statement and evaluated it in that way. Members who supported the adoption of a personal income tax gave the court high marks for Robinson and legislators who opposed the income tax were uniformly critical of the ruling.[36] Considerations of the impact of the decision on teachers'

salaries and the financial condition of central cities had more to do with the formulation of legislative attitudes toward Robinson than did analyses of its implications for the quality of education in the state. Legislators' fiscal attitudes coincided closely with their evaluation of Robinson while their educational opinions appeared to be essentially unrelated. The positive benefits that emerged from linking the court's prestige to the issue were more than offset by the complications that resulted from the perceptions of Robinson as an income tax issue.

Executive departments are normally more deeply rooted in established policy decisions than are legislatures and less disrupted by external events.[37] In the New Jersey Department of Education, there was almost no questioning of the wisdom of the supreme court's decision in Robinson, and few contemplations of opposition to it. For the department, the court provided a new opportunity to meet the challenges of education in New Jersey and a new occasion to improve existing programs. This opportunity, however became essentially a new arena to consider old debates and review previously initiated policies. In fact, some argue that if the Education Commissioner whose reappointment was rejected by the state senate were still in office, everyone would agree that he had continued to implement the policies that he had already set in motion. The essential elements of his statewide program were mechanisms for public participation in education, a series of state goals, an educational assessment program and the development of

validated programs to remedy deficiencies revealed by the assessment. The provisions of New Jersey's State School Incentive Equalization Aid Law of 1970 provided a technique to implant an analogous educational system in local communities. Observers are hard pressed to discover any basic differences between the program components elaborated between 1969 and 1971 and the activities envisioned in the Public School Act of 1975 passed in response to Robinson and in the department's regulations to implement it. The greatest apparent addition to the earlier program is a more explicit statement of the Commissioner's authority to order remedial programs not desired by local communities.

The Robinson decision itself had a greater impact on the context in which legislative debate occurred than on the premises and considerations of departmental action. The court reduced the salience of partisanship, constituency and program performance for legislators and heightened sensitivity to the claims of fiscal equity, while at the same time immersing education reform in the controversies of an income tax debate. The court ruling altered departmental rhetoric, but it left the basic assumptions and orientations of the department unchanged.

Scope of Participation

People from New Jersey do not possess an exaggerated sense of statehood which impels them to defend their state against insult. The state's residents are no less interested in political events than Americans from other regions

but they are generally less well-informed.[38] New Jersey, sandwiched between New York and Philadelphia, has traditionally lacked the structure of government and its own means of communications to focus attention on state politics and stimulate participation in state affairs. The extent of participation in policy debates determines whether a particular point of view gets expressed or a specific interest gets represented. In New Jersey and elsewhere, inequitable and ill-conceived policies have frequently been traced to the exclusion of meaningful groups from participation in the formulation of public programs. Thus, widespread participation in the conduct of public policy has become a popular objective in the past decade and procedures for citizen involvement, freedom of information acts and sunshine laws have been cast as means to accomplish that goals. Some believe that the political significance of judicial involvement in policy disputes rests on the court's ability to mobilize previously quiescent community members.[39] In New Jersey, the legal nature of Robinson stimulated participation by groups in parts of the policy process, but ironically it also restricted involvement in other policy activities.

In New Jersey, legislators often assume that all relevant interests express their positions on important subjects, with silence interpreted as consent. In many ways, however, the litigation process contradicts the public participation process. Adversary proceedings are governed by strict rules which limit the information which can be presented and determine who will be full parties to the litigation. Generally, it is difficult for a group

to become a party to a suit after it has passed from the trial court to the appellate level. After the trial court decision in Robinson and especially after the New Jersey Supreme Court had delivered its first decision, some groups were alerted to the possible consequences of the ruling. Some organizations that normally oppose increases in public expenditures were alarmed. They wanted to become a part of the litigation to oppose at least some aspects of the judgment, but they found that the rules of adversary proceedings precluded their involvement as full participants. Faced with this fact, they were relegated to a peripheral role and forced to channel their participation into the legislative and departmental activities to respond to Robinson. They found no arena in which they could simply oppose the Robinson decision. The absence of responsible opposition to the ruling was noticed by legislators who also disagreed with the Court. A number of legislators thought seriously of fighting the Court on Robinson, but when they saw no active allies among relevant groups they were discouraged from pursuing their opposition.[40]

The Department of Education adopted a policy of exhaustive public participation in formulating its response to Robinson. Like other states, the education community in New Jersey has been split in the past decade by difficult labor-management issues, and these divisions were aggravated by the recent tenure of a rambunctious Commissioner.[41] The Department seized upon Robinson as an extraordinarily prominent issue around which it could rebuild harmony and consensus among education groups, and broad public participation was the mechanism to accomplish this. The Court

decision gave to the Robinson issues a visibility they otherwise would not have had and presented the department with a major opportunity to reassemble the state's education community.

The department wanted a program which all the relevant groups would endorse, and with remarkable intelligence and diligence it achieved just that. The department invited representatives from fourteen education groups and from other civic, economic and governmental organizations to a conference to help develop its position on Robinson. The participants were asked to formulate specific questions on seven educational topics selected by the department: educational programs, vocational preparation, budgeting, facilities, staff education, organization and assessment. A list of 659 questions was then sent to each participating organization with a request for responses and reactions.[42] Nine organizations essentially composed of professional educators returned completed questionnaires and position papers and these were then incorporated into the department's proposals and regulations.

The department tried to accommodate whatever suggestions and recommendations to build agreement among the groups. The Department returned again and again to learn the views of the most concerned associations on a full range of education issues. In reaction to external suggestions from interested groups, for example, the department agreed to specific staffing ratios in local districts for principals, assistant principals, speech correctionists, special education supervisors, school psychologists, school social workers, and learning disability teachers and established regulations

for the size of school facilities and school libraries. However desirable such specifications may be, they contradicted the department's philosophy of the indeterminacy of educational standards. The acceptance of external recommendations which would not harm the quality of education in the state was intended to win organizational support for the department's total program.

The notoriety which the supreme court bestowed on Robinson encouraged groups to become involved in the department's process for responding to the decision, and the department eagerly threw open the doors for such participation. Rather than hiding the formulation of proposals in its bureaucratic corridors, the department created a set of genuine events which permitted almost universal involvement. The costs of full participation in these events, however, were high, and many groups, especially urban-based minority groups, dropped by the wayside. Groups with the resources and intense interest to remain in the tiring process found their concerns reflected in the department's positions, and this aided the department in adhieving its consensus among the active educational associations. The achievement was then skillfully used by the Department to still objections and withstand inconsistent proposals from outside the educational community.

Policy Process

The policy making process in New Jersey displays the unique interweaving of tradition and change that has characterized New Jersey for a decade. Major policy initiatives have historically been proposed by the chief executive and then ratified by the legislature only if the governor had successfully built support

for his proposal among party officials in the counties. On minor issues, the executive branch usually drafted bills and the legislature normally enacted them with only minor amendment. Either way, the legislature accepted decisions made elsewhere. This established process is now being challenged, however, by basic developments taking place in the structure of New Jersey politics: the traditional localism of politics is being eroded, state agencies are expanding their capacities and the political environment of the state is becoming more organized and complex.[43] The events of Robinson have contributed to the development of a new policy process to replace the one that is passing.

The New Jersey Department of Education has been regarded by many in political circles as a sleepy institution whose activities were guided more by folklore than professionalism. When faced with the Robinson issues, departmental leaders had to decide how the state's revitalized constitutional obligation to provide a thorough and efficient education could best be defined. The new education program could be expressed either by comprehensively revising the statutes which governed education or by requesting broad new legislation and then preparing a detailed chapter in the department's administrative code to implement it.

The department chose the second alternative, to seek a broad legislative mandate and then concentrate its policy activities on developing a new chapter in the administrative code. Literally hundreds of meetings were held by the department and other members of the state's educational community to debate issues in the proposed document. As the code went through at least seven drafts, the State Board of Education and the appropriate legislative committee devoted countless hours to line-by-line reviews of the changing document. The new chapter

in the code somewhat clarified the state's educational obligation, but the process of formulation itself could have been more significant than the content of the code. While the department depended on the legislature to enact education statutes, the administrative code was a vehicle of the department itself. The lengthy debate and controversy which swirled around a document of the department established the department in a leadership position it had never previously been granted. The preparation of a chapter in the administrative code placed the State Board of Education at the center of the political stage and forced it to act in a quasi-legislative way. The Board became the subject of ongoing media coverage, the focus of interest group concern and the object of local school board attention in ways that were new to it. The process of formulating the new chapter enhanced the leadership role of the department in New Jersey education circles and provided it an opportunity to use that role to improve the quality of education in the years ahead.

In the legislature, policy activities were centered in the specially created Joint Education Committee. The prominence of Robinson gave legislative reformers an opportunity to demonstrate the desirability of their model of legislative procedures. Most state legislatures and the New Jersey Legislature in particular have long been organized to do little more than accept proposals from others. In the mid-1960's, New Jersey's legislature had few professional employees and met only one day a week. On meeting days, the members of the assembly and the senate traveled from their districts to Trenton, spent the day on legislative activities and then returned home at night. Leadership positions in both chambers were usually rotated annually so no continuing expertise was acquired. Committees met infrequently and rarely

considered bills on their merits. The last decade has been an active period of legislative development nationally and in New Jersey, and many of the traditional practices are changing. New Jersey's legislature now meets more often, and its committees have begun to play a meaningful role in policy deliberations. Numerous professional staff have been hired to serve the legislature as committee aides, fiscal analysts, leadership staff and assistants to individual legislators. The New Jersey Legislature has recently begun to develop the capacity to shape the state's public policies, but that capacity had not been turned into performance.

The Joint Education Committee hired the director of a university research center to be committee secretary, secured the assistance of four full-time legislative aides who handled routine education issues and retained three dozen outside consultants to prepare position papers on specific topics. Between April and June 1974, committee members worked late into the night to prepare the Robinson legislation, but when the program emerged, it was clear that these activities reflected the trappings of change without its substance. Despite the committee's long hours, its report became the vehicle to introduce the executive branch proposal rather than a mechanism to explain a legislative package. The members of the disparate committee immersed themselves in the administration recommendations and almost unanimously persuaded themselves of their validity, but they had not prepared a proposal of their own. The executive education program was set aside by the legislature when the administration's companion proposal for the adoption of a personal income tax was rejected by the state senate.

The committee's efforts were not wasted, however. During the deliberations, members and staff became familiar with the detailed education issues involved, the

concerns of the professional associations and the viewpoints of the relevant legislators. On its own, the committee's talented leadership discussed the education governance and school aid provisions of the original program with the legislators and groups involved in the controversy. A new bill was then drafted and later enacted which reflected the policy positions, organizational pressures and the constituency perspectives of the legislators. These activities are among the first occasions in which a committee of the New Jersey Legislature displayed significant initiative in the passage of a comprehensive program in a major policy area. And this precedent was soon repeated.

From July 1974 to June 1975, the New Jersey senate turned aside numerous administration proposals for the adoption of a personal income tax. For this reason and others, relations between the legislature and the administration deteriorated so completely that the governor finally announced that he would make no more recommendations on how to raise funds required to pay for the Robinson program and other state activities. In March, the assembly leadership prepared its own fifteen part taxation program which included a graduated personal income tax, reductions in local property taxes, a state revenue-sharing program, limitations on expenditure increases for all levels of government and no new funds for state operations. After much debate, procrastination and a court order closing the state's schools, a revised version of this program was finally passed by the state senate and signed by the governor in August 1976.

When the assembly speaker gaveled the exhausted chamber into recess after fruitless all night sessions in June and July 1976, most regarded it as another manifestation of a hopelessly inept legislature. To the contrary, the events

reflected early traces of the emergence of a new process for fashioning public policy in New Jersey. Both the legislature and the Department of Education demonstrated independent initiative and capacity in dealing with Robinson which few people previously believed that they possessed. The Robinson decision highlighted fundamental issues in the state's politics at a critical time and thereby accelerated transitions which were occurring in the state's governance.

Conclusion

It is too early to tell if the new legislation will improve the quality of education in New Jersey. The controversy has yielded some additional state aid for local school districts, but most of this money would probably have materialized anyway. Furthermore, the allocation formula for these funds leaves something to be desired. Jersey City, for example, will receive $39 million under the new school aid program compared to the $43 million it would have received if the aid had been distributed according to the provisions of the old program declared unconstitutional by the court. From this comparison, Jersey City will receive $4 million less in school aid under the new program than under the provisions of the old formula even though Jersey City initiated the Robinson v. Cahill litigation and supposedly "won" it.[44] Proponents of the original litigation argue that the new legal principles won through the courts will now make it easy to secure major financial gains in new litigation in the years ahead.

The Robinson decision plunged the legislature deep into the complexities of the state's education programs. The participation of the court in Robinson multiplied the number of issues legislators had to consider and took from them some of their ability to manage the legislative process. The court altered the policy context in which school reform was considered and permitted it to be

defined as an income tax issue. Judicial involvement made it difficult for groups to frontally oppose Robinson, and at the same time it expanded participation in the state's efforts to respond to the decision. The State Department of Education did not wish to have the legislature and the other lay groups make uninformed education decisions. For the department, Robinson was essentially a new opportunity to revitalize established policies and reunite antagonistic groups. The events of Robinson were a landmark in the institutional development of both the legislature and the department, and they constitute the first evidence of the emergence of a new policy process in New Jersey politics.

Most examinations of judicial involvement in education and other policy areas view courts as decision making institutions. The premise that courts act as agenda setting mechanisms in policy controversies yields meaningful perspectives on events and highlights important characteristics of the agenda setting process itself which are not otherwise readily apparent.

Notes

1. 62 N.J. 473 (1973); appeal on Order to Show Cause decided May 13, 1976.

2. See for example, Harrell P. Rodgers, Community Conflict, Public Opinion and the Law: The Amish Dispute in Iowa (Columbus: Charles E. Merrill, 1969).

3. Archibald Cox, The Role of the Supreme Court in American Government (New York: Oxford University Press, 1976), 73, 88, 103.

4. Harry P. Stumpf, Community Politics and Legal Services: The Other Side of the Law (Beverly Hills: Sage Publications, 1975), 276-277; Stuart A. Scheingold, The Politics of Rights: Lawyers, Public Policy and Political Change (New Haven: Yale University Press, 1974), 95-96; Charles V. Hamilton, The Bench and the Ballot: Southern Federal Judges and Black Voters (New York: Oxford University Press, 1973); "Testimony of James S. Coleman before the Senate Judiciary Committee October 28, 1975," 4, 22. See also James S. Coleman, "Recent Trends in School Integration," Educational Researcher, (July-August 1975): 3-12.

5. Scheingold, The Politics of Rights, 99, 94.

6. Nathan Glazer, "Towards an Imperial Judiciary?" The Public Interest, (Fall, 1975): 104-123.

7. Harold J. Ruvoldt, Jr., Plaintiff's Complaint in Robinson v. Cahill as filed February 13, 1970.

8. 62 N.J., at 488-489.

9. Stephen V. Monsma, American Politics: A Systems Approach (Hinsdale, Illinois: The Dryden Press, 1973), 354.

10. Jack W. Peltason, "After the Lawsuit is Over," in Jack W. Peltason (ed.), Federal Courts in the Political Process (New York: Random House, 1955).

11. Archibald Cox, "Forward: Constitutional Adjudication and the Promotion of Human Rights," Harvard Law Review, (1966): 91-92.

12. Jonathan D. Caspar, Lawyers before the Warren Court (Urbana: University of Illinois Press, 1972), 20, 160. See also other works which discuss courts as setting agenda, for example, Neal A. Milner, The Court and Local Law Enforcement: The Impact of Miranda (Beverly Hills: Sage Publications, 1971, 18; and Kenneth M. Dolbeare and Phillip E. Hammond, The School Prayer Decisions: From Court Policy to Local Practice (Chicago: University of Chicago Press, 1971), x-xi.

13. John E. Coons, William H. Clune, and Stephen D. Sugarman, Private Wealth and Public Education (Cambridge, Mass: Harvard University Press, 1970); Statement of Harold J. Ruvoldt, Jr. to the Perma-

nent Commission on State School Support, November 23, 1971.

14. See Van Susartz V. Hatfield, 334 F. Supp. 872 (SD Minn. 1971).

15. "State Supreme Court: A New Team," New York Times, April 12, 1976, New Jersey Section: 1, 28-29.

16. Henry Robert Glick and Kenneth N. Vines, State Court Systems (Englewood Cliffs: Prentice-Hall, 1973), 61.

17. Unidentified quotations based on interviews by the author.

18. See Dominick A. Mazzagetti, "Chief Justice Joseph Weintraub: The New Jersey Supreme Court 1957-1973," Cornell Law Review (January 1974), esp. 203-208.

19. 1875 Amendment to Article IV, Section 7, Clause 6 of 1844 New Jersey State Constitution.

20. See Roger W. Cobb and Charles D. Elder, Participation in American Politics: The Dynamics of Agenda Building (Boston: Allyn-Bacon, 1971); and Peter Bachrach and Morton S. Baratz, "Two Faces of Power," American Political Science Review, (September, 1962), 947-952.

21. See Frederic N. Cleaveland and associates, Congress and Urban Problems (Washington: Brookings, 1969).

22. The following footnotes 28 through 32 and 34 through 36 are based on interviews with members of the New Jersey Legislature and the New Jersey Department of Education, conducted in 1975 and 1976. The respondents from both groups were selected either because of their involvement in issues triggered by the Robinson-Cahill decision or because they reflected diversities of philosophy within their respective group. The questions referred to by the footnotes are reproduced here along with the recorded responses.

23. See consultant papers assembled by Joint Education Committee, July 1974.

24. For background see, Richard Lehne, "Revenue and Expenditure Policies," in Politics in New Jersey, edited by Alan Rosenthal (New Brunswick, New Jersey: Eagleton Institute of Politics, 1975).

25. Based on New Jersey Department of Education "Draft and T and E Discussion Only," November 19, 1973.

26. See "Report of the Joint Education Committee to the New Jersey Legislature," June 13, 1974, 3-4; and William A. Shine and Susan Kinsey, "Creativity of the School and School Finance Reform: The New Jersey Experience," New Jersey Department of Education, July 1974.

27. This paragraph relies on a seminar paper prepared by James Dimon,

"Press Coverage of the New Jersey Supreme Court," Department of Political Science, Rutgers University, May, 1976; on press coverage of courts, see also Bertha Clark, "A Study of Efforts from 1947 to 1962 to Obtain a Broad-Based Tax for New Jersey," Montclair State College Master's Thesis, 1964; W.A. Hatcher, "Journalism and the School Prayer Decision," Columbia Journalism Review, 1 (Fall 1962); Howard A. James, "The Crisis in our Courts," Nieman Reports, 30 (Spring 1972), 19-22; David R. Manwaring, Render Unto Caesar: The Flag Salute Controversy (Chicago: University of Chicago Press, 1962), Chapters 7 and 11.

28. "On the whole, how good a job do you think schools in the state are doing educating children?"

	Legislative Response	
Excellent or Good	10	(39%)
Only Fair or Poor	13	(50%)
No Answer	3	(11%)

29. "Public schools are not teaching basic skills as well as they once did."

	Legislative Response	
Agree	20	(77%)
Disagree	2	(8%)
No Answer	4	(15%)

30. "Do you think school teachers are treated better by government than most other groups in society, treated about the same, or treated worse?"

	Legislative Response	
Treated better	17	(65%)
Treated same or worse	7	(27%)
No answer	2	(8%)

31. This footnote displays the relationship between the amount of legislators' time devoted to educational issues and their attitudes toward New Jersey schools' performance:

	Evaluation of Schools' Performance	
Time devoted to education issues	Good or Excellent	Only Fair or Poor
Much or some	7	2
Little or none	3	11

32. a. "In general, the schools in the state are doing a good job educating children."

	Departmental Response	
Agree	14	(88%)
Disagree	0	(0%)
Uncertain	2	(13%)

b. "Public schools are not teaching basic skills as well as they once did."

	Departmental Response	
Agree	6	(38%)
Disagree	9	(56%)
Uncertain	1	(6%)

33. San Antonio Independent School District v. Rodriguez, 411 US 1, 58 (1973).

34. "Were partisan considerations as important on the school controversy as they are on most other issues?"

	Legislative Response	
As Partisan	4	(15%)
Less Partisan	15	(58%)
No Answer	7	(27%)

35. This footnote displays the relationship between legislative attitudes toward the New Jersey Supreme Court and their reactions to the Robinson-Cahill decision.

		Legislative Response: Legislative View of Court	
		Positive	Negative
Evaluation of Robinson Decision	Approve	12	2
	Disapprove	4	2

N=20

36. This footnote examines the relationship between legislative reactions to the Robinson-Cahill decision and attitudes toward the desirability of a state income tax.

		Legislative Response: Attitude toward income tax	
		Support	Oppose
Evaluation of Robinson Decision	Approve	13	0
	Disapprove	3	7

N=23

37. Jerome T. Murphy, State Education Agencies and Discretionary Funds (Lexington, Massachusetts: Lexington Books, 1974).

38. This paragraph is derived from Stephen Salmore, "Public Opinion," in Rosenthal (ed.), New Jersey Politics, 59-77.

39. See Scheingold, op.cit., chapter 4.

40. Compare to Walter F. Murphy, Congress and the Court (Chicago: University of Chicago Press, 1962).

41. Roald F. Campbell (editor), State Policy Making for the Public Schools (Columbus: Educational Governance Project of the Ohio

State University, 1974).

42. New Jersey Department of Education, "Towards a Definition of 'Thorough and Efficient': A Report to the State Board of Education," (Trenton: mimeo, November, 1973).

43. See chapters in Rosenthal, op.cit., especially chapters 3-7.

44. Undated material assembled by State Department of Education and submitted to New Jersey Supreme Court.